Filed 1/15/19 P. v. Gray CA2/2

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>WAYNE DINSMORE GRAY,<br><br>Defendant and Appellant. | B281933<br><br>(Los Angeles County Super. Ct. No. BA417246) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Kathleen A. Kennedy, Judge. Affirmed.

Jennifer Peabody, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Colleen M. Tiedemann and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

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In an information filed by the Los Angeles County District Attorney's Office, defendant and appellant Wayne Dinsmore Gray[1] was charged with three counts of murder (Pen. Code, § 187, subd. (a); counts 1-3)[2] and one count of possession of a firearm by a felon (§ 29800, subd. (a)(1); count 5). As to counts 1 through 3, it was alleged that defendant used and personally and intentionally discharged a handgun (§ 12022.53, subds. (b)-(d)), a principal used and personally and intentionally discharged a handgun (§ 12022.53, subds. (b)-(e)), and the murders were committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist criminal conduct by gang members (§ 186.22, subds. (b)(1) & (b)(5)). As to counts 1 through 3, a special circumstance was alleged that defendant committed multiple murders within the meaning of section 190.2, subdivision (a)(3). As to count 1, a special circumstance was alleged that defendant killed the named victim while lying in wait, within the meaning of section 190.2, subdivision (a)(15).

Defendant pled not guilty and denied the special allegations.

The jury found defendant guilty as charged. It also found all allegations and special circumstances to be true. The trial

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[1] Defendant was charged with codefendants Leon Panting (Panting) and Jerry Wilson (Wilson) on count 1 and Javier Pellecer (Pellecer) on counts 2 and 3. Pellecer's motion to sever was granted. Defendant was tried alone after Panting and Wilson entered plea agreements.

[2] All further statutory references are to the Penal Code unless otherwise indicated.

court sentenced defendant to two consecutive terms of life without the possibility of parole (LWOP) plus 100 years to life in state prison, including three 25-year enhancements that were imposed under section 12022.53, subdivision (d).

Defendant timely filed a notice of appeal.

We affirm.

## FACTUAL BACKGROUND

*Prosecution's Evidence*

The October 6, 2008, Murders of Columbus Campbell (Campbell) and Kavette Watson (Watson)

The Rollin' 60's are a criminal street gang with approximately 2,000 members. Their primary activities include robberies, burglaries, homicides, and vandalism. Members of the gang are known to murder each other to gain respect and prestige. The gang has a slogan related to these in-house murders: "[Y]ou are not really a true Rollin' 60 until you kill a Rollin' 60 gang member."

Defendant was a member of the Rollin' 60's. Campbell was also a Rollin' 60's Crips gang member. In September 2008, defendant was involved in a fight with Campbell in the presence of a famous rapper and Rollin' 60's gang member. During the fight, Campbell struck defendant "in a blind-sided shot and cut his eye." Defendant suffered a black eye. Campbell won the fight.

On October 6, 2008, defendant asked Pellecer, a fellow Rollin' 60's gang member, to help him kill Campbell. Pellecer agreed. They found Campbell sleeping in a parked car with Watson on 63rd Street and Crenshaw Boulevard. Pellecer pulled his car next to Campbell's car, a white Mercedes. Defendant got

out of the car and shot Campbell and Watson. Pellecer then drove away. The murders occurred within Rollin' 60's territory.

Los Angeles Police Department Officer Thomas Callen arrived at the scene. He saw the white Mercedes with the windows shot out. Campbell's and Watson's bodies were inside; they both had been shot in the head. The police recovered 11 .40-caliber casings and an expended bullet.

A gang expert opined that a hypothetical crime based on the facts of Campbell and Watson's murders were committed for the benefit of, at the direction of, and in association with the Rollin' 60's. Campbell got the best of defendant in a fight, and defendant needed to retaliate. The killing raised defendant's status in the gang and benefitted the gang by instilling fear and intimidation in the community.

June 2, 2013, Murder of Charles Westby (Westby)

Dorset Village is an apartment complex within the Rollin' 60's territory. In June 2013, five or six members of the gang lived in the apartment complex, including defendant, Wilson, and Panting. Defendant, Wilson, and Panting were all members of the Dorset Village Clique, a subset of the Rollin' 60's. The clique claimed Dorset Village as its territory. Westby lived in Dorset Village, but he was not a member of a gang.

Wilson and defendant were "real close," like "father and son." On June 2, 2013, Wilson noticed that defendant looked irritated and asked defendant what was wrong. Defendant stated that he was with three other individuals in the apartment manager's garage shed when Westby approached them. Defendant and Westby had an argument. Defendant told Westby to leave. Westby pulled a gun on defendant. Westby pointed the gun at defendant; he pulled the trigger, but the gun did not fire.

Wilson tried to calm defendant down, but was unsuccessful. Defendant stated that he was going to kill Westby. Panting arrived, and defendant devised a plan to murder Westby. Panting's role was to call Westby downstairs to the middle of the apartment complex. Wilson's role was to call defendant when Westby was on his way back to the back of the apartment complex.

Wilson and Panting left defendant's apartment together. They walked towards a tree in the middle of Dorset Village. At some point, the two men separated, but Wilson heard Panting call Westby down.[3] Wilson then borrowed another Dorset Village's resident's cell phone to call defendant. Defendant asked where Westby was, and Wilson told him. Five to seven seconds after defendant hung up the phone, Wilson heard six to seven "rapid-fire" gunshots.[4]

Los Angeles Police Department Officer Jose Bonilla arrived at the scene; Westby was visibly injured and taken to the hospital. He later died from his injuries.

A gang expert opined that a hypothetical crime based on the facts of the murder of Westby was committed for the benefit of, at the direction of, and in association with the Rollin' 60's because defendant felt disrespected when Westby pulled a gun on him in Rollin' 60's territory. Everyone who participated in the

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[3] Brenda Dobbins (Dobbins), a neighbor in Dorset Village, testified that she heard Panting call out to Westby.

[4] Dobbins also testified that she heard the gunshots and then saw Westby laying on the ground.

murder had their gang status elevated. The gang benefitted by instilling fear and intimidation in the community.

Subsequent Events

Shortly after the murders, defendant visited Queron Battey's (Battey) apartment in Dorset Village. Defendant asked Battey for a drink, and Battey invited him inside. Battey gave defendant a glass of water. Defendant then went to Battey's bedroom. Five minutes later, Battey went to the bedroom. Defendant was praying. Battey and defendant then had a conversation during which defendant told Battey that he had murdered Westby, and detailed how he had committed the murder.[5]

Meanwhile, on October 16, 2013, Pellecer was detained by police and placed in a jail cell with a confidential informant (CI). Pellecer explained to the CI how he and defendant had murdered Campbell and Watson. He also admitted to getting rid of the gun used by defendant to murder Westby. (See *People v. Pellecer* (Sept. 18, 2018, B280333) [nonpub. opn.], at pp. 6–8.)

On February 9, 2017, Wilson reached a plea agreement. He spoke to the police and provided the details of the Westby murder. At trial, he also testified that defendant admitted to killing Campbell and Watson and detailed the events surrounding Westby's murder.

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[5] Frances Campbell was "in a dating relationship with" Battey during this time. She testified that she was at Battey's residence on June 2, 2013, when defendant showed up, approximately 15 minutes after she heard gunshots. Defendant walked into the apartment and went to Battey's bedroom. After a few minutes, Battey went into the bedroom. Battey told Frances Campbell that defendant had told him that he had killed "a younger kid." Westby was 23 years old when he was murdered.

*Defense Evidence*

Defendant rested without testifying or providing an affirmative defense.

## DISCUSSION

I. *The trial court properly omitted jury instructions on accomplice testimony because Pellecer's out-of-court statements were not "testimony"*

Defendant contends that the trial court erred by failing to instruct the jury (CALCRIM Nos. 301 & 335) that Pellecer was an accomplice and thus his statements had to be viewed with caution and required corroboration.

A. Pellecer's involvement

On October 16, 2013, Pellecer was placed in a jail cell with a CI, during which time Pellecer made a host of admissions regarding his involvement with the crimes at issue. (*People v. Pellecer*, *supra*, B280333, at pp. 6–8.)

At defendant's trial, Pellecer was called as a witness. He refused to take the oath or make any statement. The trial court found him in contempt of court. A transcript of his statements to the CI was given to the jury. The statements were admitted as declarations against penal interest.

B. Other evidence tying defendant to the murders

Multiple persons testified at trial. Although they could not identify defendant as the shooter, two witnesses provided descriptions that matched defendant's description. Ricardo Zamora (Zamora) described the shooter as a Black man; he was tall, slim, and his hair was braided or in a ponytail. Dumoris Preuitt (Preuitt) likewise testified that the passenger in the car that pulled up next to the parked Mercedes was a Black man with braided hair. At the time of the murders, defendant had

long hair that he wore in a ponytail. When defendant was arrested, the police listed his height as 6 feet 2 inches, and his weight as 180 pounds.

In around 2011 or 2012, Wilson had a conversation with defendant. Defendant told Wilson that he suffered a black eye as a result of Campbell's "cheap shot[]." He then told Wilson that he killed Campbell. He also admitted to killing Watson because "she started screaming."

C. Pellecer's out-of-court statements to the CI were not subject to the corroboration requirement for accomplice statements because they were properly admitted as statements against penal interest

Under section 1111, a "conviction [cannot] be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." For purposes of section 1111, the "testimony of an accomplice" includes out-of-court statements "'made under suspect circumstances,'" such as "'when the accomplice has been arrested or is questioned by the police.'" (*People v. Williams* (1997) 16 Cal.4th 153, 245.) "'On the other hand, when the out-of-court statements are not given under suspect circumstances, those statements do not qualify as "testimony" and hence need not be corroborated under . . . section 1111.'" (*People v. Williams*, *supra*, at p. 245.)

The trial court properly admitted Pellecer's statements into evidence under the hearsay exception for statements against penal interest. (Evid. Code, § 1230.) Unquestionably, Pellecer

was unavailable (he refused to testify), and his statements to the CI were against his penal interest.[6]

Moreover, his statements to the CI were sufficiently reliable to warrant admission despite their hearsay character. (*People v. Duarte* (2000) 24 Cal.4th 603, 610–611.) "To determine whether the declaration passes the required threshold of trustworthiness, a trial court 'may take into account not just the words but the circumstances under which they were uttered, the possible motivation of the declarant, and the declarant's relationship to the defendant.'" (*People v. Cudjo* (1993) 6 Cal.4th 585, 607.)

Here, Pellecer made his confession in a noncoercive setting to an individual he thought was a fellow inmate. (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 335 ["the most reliable circumstance is one in which the conversation occurs between friends in a noncoercive setting that fosters uninhibited disclosures"].) He took responsibility for his role as the driver in the murders of Campbell and Watson. He never denied his involvement in the killings. And his statements to the CI contained specific details of the crimes. Under these circumstances, Pellecer's confession was sufficiently trustworthy and reliable. (*People v. Arauz* (2012) 210 Cal.App.4th 1394, 1399, 1401; *People v. Arceo* (2011) 195 Cal.App.4th 556, 575–577.)

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[6] Defendant asserts that Pellecer's statement that he got rid of the murder weapon for defendant was not against his penal interest. We disagree. That statement was made against Pellecer's interest because it made him an accessory after the fact to Westby's murder. (§ 32; *People v. Nguyen* (1993) 21 Cal.App.4th 518, 536.)

Because the trial court properly admitted Pellecer's statements as a declaration against interest, "no corroboration was necessary, and the [trial] court was not required to instruct the jury to view [Pellecer's] statement with caution and to require corroboration." (*People v. Brown* (2003) 31 Cal.4th 518, 556.)

D. Any alleged instructional error was harmless

Even if the trial court had erred by failing to instruct on accomplice liability, any assumed error was "manifestly harmless." (*People v. Brown*, *supra*, 31 Cal.4th at p. 556.) There is ample corroborating evidence in the record. (*Ibid*.) Zamora and Preuitt each provided a description of the shooter that matched defendant. And defendant admitted to Wilson that he had committed the murders.

II. *The trial court properly exercised its discretion when it denied defendant's motion to sever trial on count 1 from trial on counts 2 and 3*

Defendant argues that the trial court erred in denying his motion to sever trial of the murder of Westby (count 1) from the murders of Campbell and Watson (counts 2 & 3).

A. Relevant proceedings

Defendant moved to sever count 1 from counts 2 and 3. He argued that a trial on all three counts would likely confuse the jury; the evidence on count 1 was strong, but the evidence on counts 2 and 3 was weak; the double murder charged in counts 2 and 3 was particularly inflammatory; and aside from Pellecer's confession and gang testimony, there was no other cross-admissible evidence.

The prosecution opposed the motion.

The trial court denied defendant's motion to sever.

B. Applicable law

Section 954 provides: "Any accusatory pleading may charge two or more different offenses connected together in their commission, . . . or two or more different offenses of the same class of crimes or offenses, under separate counts, . . . provided, that the court in which a case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the accusatory pleading be tried separately."

"'The law favors the joinder of counts because such a course of action promotes efficiency.'" (*People v. Scott* (2015) 61 Cal.4th 363, 395 (*Scott*); see also *People v. Thomas* (2011) 52 Cal.4th 336, 349–350; *Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1220 ["because consolidation or joinder of charged offenses ordinarily promotes efficiency, that is the course of action preferred by the law"].) When the threshold statutory requirements for joinder are met, the "'"defendant must make a clear showing of prejudice to establish that the trial court abused its discretion in denying [the] defendant's severance motion."' [Citation.] That is, [the] defendant must demonstrate the denial of his motion exceeded the bounds of reason. [Citation.]" (*People v. Capistrano* (2014) 59 Cal.4th 830, 848, overruled in part on other grounds in *People v. Hardy* (2018) 5 Cal.5th 56, 104.)

"'Refusal to sever may be an abuse of discretion where: (1) evidence on the crimes to be jointly tried would not be cross-admissible in separate trials; (2) certain of the charges are unusually likely to inflame the jury against the defendant; (3) a "weak" case has been joined with a "strong" case, or with another "weak" case, so that the "spillover" effect of aggregate evidence on several charges might well alter the outcome of some or all of the

charges; and (4) any one of the charges carries the death penalty or joinder of them turns into a capital case.' [Citation.] In determining whether denial of the severance motion was an abuse of discretion, we examine the record before the trial court at the time of its ruling. [Citation.]" (*Scott*, *supra*, 61 Cal.4th at pp. 395–396.)

C. Analysis

Applying these legal principles, we conclude that the trial court did not abuse its discretion by denying defendant's motion to sever count 1 from counts 2 and 3. Joinder of the three murders was proper under section 954 because the offenses are "of the same class of crimes." (§ 954; see also *People v. Thomas* (2012) 53 Cal.4th 771, 798.)

And, even if there was error defendant has not shown prejudice. (*Alcala v. Superior Court*, *supra*, 43 Cal.4th at p. 1220.) Some of the evidence would have been cross-admissible in separate trials. (*Id*. at p. 1221 ["complete (or so-called two-way) cross-admissibility is not required"].) As defendant agrees, the gang expert's testimony would have been admissible in both trials. Furthermore, Pellecer's statements to the CI would have been admissible[7] in both trials because he provided details of the murders of Campbell and Watson and stated that he disposed of the murder weapon used to kill Westby. (*People v. Armstrong* (2016) 1 Cal.5th 432, 456 [if there is evidence that is cross-admissible, that factor alone is normally sufficient to dispel any allegation of prejudice].)

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[7] Notably, at trial, defense counsel conceded that Pellecer's statements were cross-admissible.

"[E]ven if the evidence underlying these charges would *not* be cross-admissible in hypothetical separate trials, that determination would not itself establish prejudice or an abuse of discretion by the trial court in declining to sever properly joined charges." (*People v. Soper* (2009) 45 Cal.4th 759, 775; see also *Alcala v. Superior Court*, *supra*, 43 Cal.4th at p. 1221.) A reviewing court must then consider whether: (1) some charges are likely to unusually inflame the jury against the defendant, (2) a weak case has been joined with a strong case or another weak case so that the total evidence may alter the outcome of some or all of the charges, and (3) one charge is a capital offense or the joinder converts the prosecution into a capital offense. (*People v. Soper*, *supra*, 45 Cal.4th at p. 775.)

Here, the crimes were not unusually likely to inflame the jury against defendant.[8] The murder of Westby and the murders of Campbell and Watson were similar in nature and equally egregious. They all involved defendant shooting unsuspecting victims after defendant felt slighted. Neither case was likely to unduly inflame the jury against him. (*People v. Soper*, *supra*, 45 Cal.4th at p. 780.)

Relying upon *Williams v. Superior Court* (1984) 36 Cal.3d 441 (*Williams*), superseded in part by statute as stated in *People v. Jones* (2013) 57 Cal.4th 899, 927, and *People v. Ybarra* (2016) 245 Cal.App.4th 1420, 1435, defendant argues that the combination of multiple gang-related murders resulted in extreme prejudice. *Williams* is readily distinguishable. In that case, the defendant was charged in two separate murders, and

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[8] We note that defendant agrees that each of the murders was "separately inflammatory and egregious" and that neither murder was "notably more inflammatory than the others."

his participation in the killings was unclear. (*Id*. at pp. 444–445.) In contrast, there is no ambiguity here about defendant's participation in all three murders. He was the shooter and ringleader in all three murders.

Moreover, nothing in the appellate record indicates that a weak case was joined with a strong case (or two weak cases were put together). In fact, both cases here were strong. On count 1 (murder of Westby), Wilson testified as to the events surrounding the murder. Battey testified that defendant confessed to the murder and corroborated Wilson's account. And, Pellecer told the CI that he got rid of the murder weapon for defendant. (*People v. Pellecer*, *supra*, B280333, at p. 8.)

On counts 2 and 3, Pellecer provided the details of the murders to the CI. (*People v. Pellecer*, *supra*, B280333, at pp. 6–8.) Those details were corroborated by Wilson, who testified that defendant admitted killing Campbell and Watson.

All of this evidence confirms that neither case was weak.

Finally, the joinder did not convert the matter into a capital case.

III. *Admission of Pellecer's recorded conversation with the CI did not violate defendant's right to confrontation*

Defendant argues that Pellecer's statements to the CI were inadmissible. We disagree.

A. Pellecer's statements to the CI were not testimonial

Pellecer's statements to the CI were not testimony. "[T]he confrontation clause is concerned solely with hearsay statements that are testimonial, in that they are out-of-court analogs, in purpose and form, of the testimony given by witnesses at trial." (*People v. Cage* (2007) 40 Cal.4th 965, 984.) To be "testimonial" for purposes of the confrontation clause, a statement must "have

been given and taken *primarily* for the *purpose* ascribed to testimony—to establish or prove some past fact for possible use in a criminal trial." (*Ibid*.) And "statements unwittingly made to an informant are not 'testimonial' within the meaning of the confrontation clause." (*People v. Arauz*, *supra*, 210 Cal.App.4th at p. 1402.)

B. Pellecer's statements do not violate the *Bruton* rule

Moreover, Pellecer's statements did not violate the *Bruton*[9] rule. (See *People v. Aranda* (1965) 63 Cal.2d 518.) The *Bruton* rule provides that the confrontation clause generally prohibits the admission, at a joint trial, of one defendant's confession "that is 'powerfully incriminating' as to a second defendant when determining the latter's guilt." (*People v. Fletcher* (1996) 13 Cal.4th 451, 455.) But *Bruton* was decided nearly four decades before *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*), which set forth a fundamentally new framework for determining when hearsay statements violate the confrontation clause, a framework in which the "testimonial" nature of a statement is paramount. (See *Whorton v. Bockting* (2007) 549 U.S. 406, 420 [finding that *Crawford* eliminated "Confrontation Clause protection against the admission of unreliable out-of-court nontestimonial statements," and that the confrontation clause has no application to "an out-of-court nontestimonial statement" even if the statement lacks reliability].)

Defendant contends that the *Bruton* rule applies even when a codefendant's confession was nontestimonial. However, as defendant notes, the California Supreme Court and various Courts of Appeal have concluded otherwise. (See, e.g., *People v.*

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**9** *Bruton v. United States* (1968) 391 U.S. 123 (*Bruton*).

*Cortez* (2016) 63 Cal.4th 101, 129; *People v. Gutierrez* (2009) 45 Cal.4th 789, 812 ["[o]nly the admission of testimonial hearsay statements violates the confrontation clause"]; *People v. Gallardo* (2017) 18 Cal.App.5th 51, 66–68; *People v. Arceo*, *supra*, 195 Cal.App.4th at p. 575; *People v. Arauz*, *supra*, 210 Cal.App.4th at pp. 1401–1402.) Not only are we bound by our Supreme Court's holding (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455), we opt to agree with our colleagues in the Courts of Appeal.

C. Admission of Pellecer's statements to the CI did not violate defendant's right to due process

Defendant contends that even if Pellecer's statements did not violate his right to confrontation, he was denied due process because he did not have the opportunity to cross-examine Pellecer.

It is well-established that "the routine application of provisions of the state Evidence Code law does not implicate a criminal defendant's constitutional rights." (*People v. Jones* (2013) 57 Cal.4th 899, 957.)

D. The trial court did not abuse its discretion in admitting Pellecer's statements under Evidence Code section 1230

For the reasons set forth above, the trial court did not abuse its discretion in admitting Pellecer's statements under Evidence Code section 1230 as statements against penal interest.

E. Harmless error

In any event, any alleged error in admitting Pellecer's statements to the CI was harmless under any standard as to the murder of Westby (count 1). (*People v. Watson* (1956) 46 Cal.2d 818, 836; *Chapman v. California* (1967) 386 U.S. 18, 24.) Aside from Pellecer's statements to the CI implicating defendant in the

Westby murder, there was overwhelming evidence that defendant committed the murder. Dobbins's statement to the police corroborated Wilson's testimony that Panting called out Westby before the shooting. Battey testified that defendant confessed to the murder and corroborated Wilson's account of the events. Frances Campbell's testimony corroborated Battey's testimony that defendant confessed to the murder. Cell phone records indicated that defendant's cell phone was in the vicinity of the murder when it occurred. Given all of this evidence, any alleged error was harmless as to count 1.

IV. *The matter is not remanded to allow the trial court to exercise its discretion to strike the firearm enhancements*

Defendant's sentence includes three 25-year enhancements that were imposed under section 12022.53, subdivision (d), on counts 1 through 3 for personally and intentionally discharging a firearm, causing death. Defendant contends that the matter should be remanded to allow the trial court to exercise its discretion to strike the firearm enhancements. The People agree.

Although defendant correctly points out that the newly amended section 12022.53, subdivision (h), which allows a trial court discretion to strike or dismiss an enhancement at sentencing, applies to him and this case, we decline to remand this case for resentencing; the appellate record shows that there is no reasonable possibility that the trial court would exercise its discretion to lessen the sentence. (*People v. Gutierrez* (1996) 48 Cal.App.4th 1894, 1896.)

Prior to sentencing defendant, the trial court noted that there was "no reason for this slaughter." Although the murders were "just a terrible tragedy," it was "not one that the court [can] overlook. I mean, when you kill three people, there are serious

consequences and consequences that you deserve." The trial court continued: "[U]nfortunately for you and fortunately for the rest of society, you're not fit to be out among regular, law-abiding people. [¶] . . . [¶] Shooting people, gunning people down as they are sleeping in a car—and the young woman, the 16 year-old girl who was in the car, she hadn't done anything to offend you; and then setting up Mr. Westby so that you come upon him, and he has no idea that you're lying in wait to kill him, what is that? That's predatory. It's inhumane. And you deserve the sentence that you're going to get. [¶] Most people go through life, they don't kill anyone. And people in life have disputes with people, have fights with people, are slighted by others. [¶] If every time somebody offended me I would resort to violence or get a gun and kill them, and everybody acted that way, the slaughter on—everywhere would be immeasurable. There would be piles of bodies everywhere. Because we can't go through life without being offended from time to time by others. [¶] But it does not justify killing people. [¶] . . . [¶] And the court finds that these crimes involve great violence, bodily harm or threat of great bodily harm. [¶] The victims were defenseless and unsuspecting. [¶] The defendant used a firearm at the time of the offenses. As in the Westby murder, the defendant induced others to participate in the crime. And—including a minor. [¶] And the carrying out of the crime, especially in the Westby murder, indicated planning, sophistication and professionalism. [¶] The defendant has served a prior prison term. [¶] All of these things are circumstances in aggravation; there are no circumstances in mitigation."

"In light of the trial court's express consideration of factors in aggravation and mitigation, its pointed comments on the record [and its imposition of LWOP], there appears no possibility that, if the case were remanded, the trial court would exercise its discretion to strike the enhancement altogether. We therefore conclude that remand in these circumstances would serve no purpose but to squander scarce judicial resources." (*People v. McVey* (2018) 24 Cal.App.5th 405, 419.)

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT